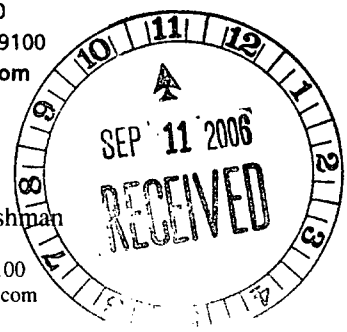
Kirkpatrick & Lockhart Nicholson Graham LLP

1601 K Street, N.W.
Washington, DC 20006-1600
202.778.9000
Fax 202.778.9100
www.klng.com



Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@klng.com

21524

September 11, 2006

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: Finance Docket No. 34931
Albemarle Corporation – Alternative Rail Service – Line of the Louisiana and North West Railroad Company

Dear Secretary Williams:

Pursuant to 49 C.F.R. § 1104.13(a), The Louisiana & North West Railroad ("LNW") hereby submits this Reply in Opposition to the Motion to Strike filed by Albemarle Corporation ("Albemarle") in this proceeding on September 7, 2006. LNW respectfully urges the Board to deny Albemarle's Motion to Strike in the interest of developing a complete and accurate record in this proceeding.

LNW has no interest in further extending the pleading cycle in this proceeding and has been urging the Board to issue a decision expeditiously in both this proceeding and the related declaratory order proceeding in Docket No. 42096. Although Albemarle always wants the last word, LNW cannot remain silent while Albemarle distorts the factual record and attempts to distract the Board from the relevant issues.

LNW's September 6th Response to Albemarle's Second Rebuttal should be accepted into the record for several important reasons. First, LNW's Response corrects certain erroneous and misleading statements set forth in Albemarle's Second Rebuttal. For example, Albemarle falsely states that the intra-plant switching it seeks to have Ouachita Railroad provide would serve "Albemarle's storage tracks, located on Albemarle's property, at Albemarle's plant." See Second Rebuttal at 8. In fact, LNW owns storage track C and all the storage tracks located on the west side of the LNW main line (storage tracks C, D and E) are located on LNW property. See LNW Response at 8. Moreover, Albemarle quibbles about the semantics of LNW's description of the grade of LNW's right of way (see Motion to Strike at 4), but fails to offer any evidence in response to the relevant point made by LNW– the dangers associated with multi-party handling of hazardous materials in that territory. See Verified Statement of Larry Brooks, attached as Exhibit A to LNW's Response ("Brooks V.S."), at 5. Finally, Albemarle claims the Board does not have jurisdiction over "any matter relating to Albemarle's storage tracks" (see

Second Rebuttal at 6) even though Albemarle urged and ultimately persuaded the federal court to refer the storage issues to the Board. LNW cannot remain silent while Albemarle distorts the record in this fashion.

Second, LNW's Response should be accepted into the record because it responds to the erroneous procedural challenges raised by Albemarle in its Second Rebuttal about the validity of LNW's factual assertions. These challenges by Albemarle effectively constitute motions to strike such evidence from the record, and LNW is entitled to reply to such arguments in accordance with 49 C.F.R. § 1104.13(a). For example, Albemarle complains about the lack of any declaration or similar statement in LNW's pleadings, and therefore LNW submitted the Brooks V.S. in its Response to moot this challenge. Second, Albemarle raises an argument about Federal Rule of Evidence 408 in its Second Rebuttal that LNW refutes in its Response. As a matter of due process, LNW must be allowed to respond to and refute the procedural challenges raised by Albemarle for the first time in its Second Rebuttal.

Third, LNW's Response should be accepted into the record because it provides the Board and all interested parties with further clarification of LNW's position in this matter. LNW believes that accepting all pleadings into the record is particularly important given the expedited nature of the relief sought by Albemarle and the evolving nature of the relevant facts. The three decisions from stand-alone cost (SAC) rate complaints that Albemarle cites in support of its Motion to Strike involved very different situations where a briefing schedule was established for the submission of opening and rebuttal evidence by each party.[1] Those cases did not involve a request for emergency relief premised on actions and responses taken by the parties immediately before or soon after the proceeding was initiated, as is the case here.

In this proceeding, both LNW and Albemarle have clarified their positions on the record and raised additional facts for the Board's consideration after filing their initial pleadings. See, e.g., Albemarle Second Rebuttal at 22 (claiming for the first time that Ouachita Railroad would use a switch engine to perform the emergency service and asking the Board to rule by September 8th in order to give Ouachita Railroad the opportunity to move such equipment); see also September 7th and September 8th letters filed by Albemarle in this proceeding (raising additional points about LNW linehaul service). It would not be fair to deprive LNW of the opportunity to respond to these factual developments, and neither party has been harmed by accepting all pleadings into the record.

---

[1] See Albemarle Motion to Strike at 2 (and Carolina Power & Light, Xcel Energy and Duke Energy decisions cited therein).

In fact, it is particularly critical here to allow LNW's Response into the record because Albemarle apparently has misunderstood LNW's position. Contrary to Albemarle's assertion in its Motion to Strike,[2] LNW does intend to continue providing intra-plant switching as requested by Albemarle on and after September 14, 2006 if so ordered by the Board but has requested that the Board (i) require Albemarle to pre-pay for such services at the $400 per car charge specified by LNW (based on a minimum of 8 switches a day, 4 days a week), (ii) require Albemarle to allow LNW to perform all intra-plant switching, and (iii) order Albemarle to make immediate alternative arrangements for storing its hazardous materials at the South Plant.

LNW fully expects Albemarle to file a prohibited Surreply to this Reply. In fact, Albemarle lays the groundwork for such a filing by claiming that it did not have a rebuttal opportunity with respect to LNW's September 6th Response (even though Albemarle clearly has responded to LNW's Response through its Motion to Strike). LNW objects in advance to any such Surreply filing by Albemarle under 49 C.F.R. § 1104.13(c), which will only further perpetuate the pleading cycle in this matter. LNW once again urges the Board to rule expeditiously in this matter (and Docket No. 42096) and to confirm that LNW is not obligated to provide intra-plant switching, storage and weighing services for Albemarle. Alternatively, if the Board orders LNW to continue to provide intra-plant switching for Albemarle, LNW seeks the conditions described in its September 6th Response and reiterated above.

Respectfully submitted,

Edward J. Fishman
Attorney for Louisiana and North West Railroad Company

cc: Martin Bercovici, Esq. (via hand delivery)
Ouachita Railroad Company (via overnight mail)
Federal Railroad Administration (via hand delivery)

[2] On page 3 of its Motion to Strike, Albemarle inaccurately claims that "LNW has served notice it will not provide switching service after September 14, 2006."